

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARK CALLAWAY, ID # 11563-078,)	
Petitioner,)	
vs.)	No. 3:07-CV-0722-B (BH)
)	ECF
DAVID BERKEBILE,)	Referred to U.S. Magistrate Judge
Respondent.)	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an Order of the Court in implementation thereof, subject cause has previously been referred to the United States Magistrate Judge. The findings, conclusions, and recommendation of the Magistrate Judge are as follows:

I. BACKGROUND

In April 2007, petitioner commenced this action by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 while he was incarcerated in the Federal Correctional Institution located in Seagoville, Texas (FCI Seagoville). On July 6, 2007, respondent filed his answer to the petition wherein he indicates that petitioner's projected release date is January 20, 2008. Later in July, petitioner filed a reply brief. On August 16, 2007, respondent filed a motion to dismiss the instant petition as moot because petitioner was transferred to a halfway house on July 25, 2007. Despite the transfer from FCI Seagoville, petitioner has filed no change of address.

II. INVOLUNTARY DISMISSAL

Rule 41(b) of the Federal Rules of Civil Procedure permits a court to dismiss *sua sponte* an action for failure to prosecute or follow orders of the court. This authority flows from a court's inherent power to control its docket, prevent undue delays in the disposition of pending cases, and avoid congested court calendars. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-31 (1962); *Martinez*

v. Johnson, 104 F.3d 769, 772 (5th Cir. 1997) (habeas action). Petitioner has failed to notify the Court of his change in address. Such failure exhibits an inclination not to prosecute this action. Accordingly, the Court should dismiss his petition for want of prosecution.

III. RECOMMENDATION

For the foregoing reasons, it is recommended that, unless petitioner files a change of address before the District Court accepts this recommendation, petitioner's writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 be dismissed without prejudice for want of prosecution pursuant to Fed. R. Civ. P. 41(b).

SIGNED this 14th day of September, 2007.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

The United States District Clerk shall serve a copy of these findings, conclusions, and recommendation on all parties by mailing a copy to each of them. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must file and serve written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. Failure to file written objections to the proposed findings, conclusions, and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE